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10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 DONNA RATLIFF, individually and on ) Case No. 2:16-cv-00253-GW-JEM  
14 behalf of all others similarly situated, )

15 Plaintiff,

16 vs.

17  
18 SOUTHERN CALIFORNIA  
19 HEALTHCARE SYSTEM, INC., DBA  
20 SOUTHERN CALIFORNIA  
HOSPITAL AT CULVER CITY

21 Defendant.

) **PLAINTIFF'S OPPOSITION TO**  
) **DEFENDANT'S MOTION TO**  
) **DISMISS FIRST AMENDED**  
) **COMPLAINT**

) Date: April 14, 2016

) Time: 8:30 a.m.

) Courtroom: 10

) Hon. George H. Wu

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ALLEGATIONS**

3 Plaintiff Donna Ratliff (“Plaintiff”) brings this action against Defendants  
4 SOUTHERN CALIFORNIA HEALTHCARE SYSTEM, INC., DBA  
5 SOUTHERN CALIFORNIA HOSPITAL AT CULVER CITY (“Defendants”) for  
6 violations of the Telephone Consumer Protection Act (“TCPA”), particularly 47  
7 C.F.R. § 64.1200(c).

8 Defendant argues that Plaintiff has failed to state a claim under 12(b)(6) for  
9 each of Plaintiff’s claims. However, Plaintiff clearly and concisely stated sufficient  
10 facts to support her claims that Defendant attempted to collect a debt by contacting  
11 her on her cellular phone by use of an autodialer. Plaintiff requested that Defendant  
12 cease contacting her by this method on multiple occasions, to no avail. Defendant  
13 attempts to ignore all of the facts Plaintiff has plead, despite being the foundation  
14 requirement of a 12(b)(6) motion.

15 Plaintiff submits this Opposition to Defendant’s Motion to Dismiss First  
16 Amended Complaint to make clear the legal and factual bases for her claims as  
17 were plead adequately in the First Amended Complaint.

18 **II. FACTUAL ALLEGATIONS**

19 At various and multiple times prior to the filing of the instant Complaint,  
20 including within the one year preceding the filing of this Complaint, Defendant  
21 contacted Plaintiff in an attempt to collect an alleged outstanding debt. (FAC, ¶6)

22 On or about August 26, 2015, Defendant contacted Plaintiff on her cellular  
23 telephone in an attempt to collect an alleged outstanding debt stemming from  
24 medical services rendered. (FAC, ¶7). As an illustrative example (and not one of  
25 limitation), Defendant contacted or attempted to contact Plaintiff on or about  
26 August 26, 2015 at 12:34 p.m., and on or about August 31, 2015 at 6:11p.m. (FAC,  
27 ¶8).  
28

1 Defendant used an “automatic telephone dialing system”, as defined by 47  
 2 *U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to collect the debt  
 3 allegedly owed. (FAC, ¶10)

4 Furthermore, Defendant utilized a prerecorded voice when leaving the  
 5 message for Plaintiff, as prohibited by 47 *U.S.C. §227(1)(A)(i)*. (FAC, ¶11)

6 As an illustrative example (and not one of limitation), Defendant left the  
 7 following voicemail using a prerecorded voice:

8  
 9 This is Patient Accounting Department of Southern California  
 10 Hospital at Culver City, calling regrading a personal business matter  
 11 for Donna Lynn Ratliff. Please contact us at your earliest  
 12 convenience. You may reach us Monday through Friday 8 a.m. to  
 13 5:30 p.m. at 1(800) 404-6627. Please use reference number  
 14 5001168850001 when calling. If we have reached this number in  
 15 error, please contact us 1(800) 404-6627, so we can remove your  
 16 phone number from our records. We appreciate the opportunity to  
 17 serve you, and are available to speak with you should any questions  
 18 arise. Again, this is the Patient Department of Southern California  
 19 Hospital at Culver City, calling regarding a personal business matter  
 20 for Donna Lynn Ratliff. Please contact us at your earliest  
 21 convenience. You may reach us Monday through Friday 8 a.m. to  
 22 5:30 p.m. at 1(800) 404-6627. Please use reference number  
 23 5001168850001 when calling. If we have reached this number in  
 24 error, please contact us 1(800) 404-6627, so we can remove your  
 25 phone number from our records. We appreciate the opportunity to  
 26 serve you, and are available to speak with you should any questions  
 27 arise. Thank you and goodbye.

28 (FAC, ¶12).

29 Defendant’s calls constituted calls that were not for emergency purposes as  
 30 defined by 47 *U.S.C. § 227(b)(1)(A)*. (FAC, ¶13).

31 Defendant’s calls were placed to telephone number assigned to a cellular  
 32 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to

1 47 U.S.C. § 227(b)(1). (FAC, ¶14).

2 Multiple times Plaintiff would answer Defendant's calls and *tell Defendant*  
 3 *to stop contacting Plaintiff*. Plaintiff even instructed her attorney to contact  
 4 Defendant and instruct it *not to place any further calls to Plaintiff's cell phone*.  
 5 Defendant's employees assured Plaintiff's attorney that no more bills or collection  
 6 efforts would be made to Plaintiff, but in fact, *Defendant continued to place*  
 7 *automated/prerecorded calls to Plaintiff's cell phone*. As such, Defendant did not  
 8 possess Plaintiff's "prior express consent" to receive calls using an automatic  
 9 telephone dialing system or an artificial or prerecorded voice on her cellular  
 10 telephone pursuant to 47 U.S.C. § 227(b)(1)(A). (FAC, ¶15, emphasis added).

11 As a result of the above violations of the TCPA, Defendant is liable to  
 12 Plaintiff for Plaintiff's actual damages, statutory damages, and costs and  
 13 attorney's fees. (FAC, ¶16).

### 14 **III. LEGAL STANDARD**

#### 15 **a. Rule 12(b)(6)**

16 A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P.  
 17 12(b)(6) tests the legal sufficiency of the claims in the complaint. The court must  
 18 accept as true all material allegations in the complaint, as well as reasonable  
 19 inferences to be drawn from them, and must construe the complaint in the light  
 20 most favorable to plaintiffs. *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480,  
 21 1484 (9th Cir. 1995); *N.L. Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).  
 22 A complaint should not be dismissed unless a plaintiff could prove no set of facts  
 23 in support of his claim that would entitle him to relief, and amendment would be  
 24 futile. *Everest & Jennings, Inc. v. American Motorists Ins. Co.*, 23 F.3d 226, 228  
 25 (9th Cir.1994). It is abuse of discretion to deny discovery unless the "necessary  
 26 factual issues may be resolved without discovery." *See Doninger v. Pacific*  
 27  
 28

1 *Northwest Bell, Inc.*, 564 F.2d 1304, 1313 (9th Cir. Wash. 1977) (Emphasis added).

2 It is well established that the sufficiency of pleadings must be reviewed in  
 3 isolation, and that a court may not consider any material beyond the pleadings in  
 4 ruling on a motion to dismiss for failure to state a claim. *Cook, Perkiss and Liehe,*  
 5 *Inc. v. Northern California Collection Service Inc.*, 911 F.2d 242, 245 (9<sup>th</sup> Cir.  
 6 1990); *Lee v. City of Los Angeles*, 250 F.3d 668 (9<sup>th</sup> Cir. 2001). The only  
 7 exceptions to this requirement are 1) where documents are submitted as part of  
 8 the complaint, they may be considered if their authenticity is not contested and  
 9 the complaint necessarily relies on them, or 2) a court may take judicial notice of  
 10 a matter of public record. *Lee*, at 681. Neither rare exception is present here.  
 11 Rather, Defendant asks this Honorable Court to foreclose Plaintiff from the  
 12 opportunity to conduct reasonable discovery,<sup>1</sup> while in the same breath presenting  
 13 “evidence” that it has sole access to in support of its Motion to Dismiss. Even  
 14 assuming that evidence was admissible and pertinent to a Motion to Dismiss,  
 15 Defendant fails to meet its “stringent” burden of providing admissible evidence  
 16 that will extinguish “any” doubt as to the existence of a genuine issue for trial.”  
 17 *Celotex Corp. v. Catrett*, 477 U.S. 317, 330-31 (1986) (emphasis added).

#### 18 **IV. LEGAL ARGUMENT**

##### 19 **a. Plaintiff Has Properly Stated A Cognizable TCPA Claim.**

##### 20 **i. Plaintiff provides sufficient facts about the challenged calls.**

21 Despite Defendant’s assertions, Plaintiff has provided more than sufficient  
 22 information in regards to the date and content of Defendant’s unsolicited calls to  
 23 Plaintiff. Plaintiff plead that Defendant called Plaintiff on or about August 26  
 24 and 31, 2015 in an attempt to collect a debt. FAC ¶7. Plaintiff plead that

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26 <sup>1</sup> The court need not decide whether the moving party has satisfied its burden of  
 27 persuasion unless and until the Court finds the moving party has discharged its  
 28 initial burden of production. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157–161  
 (1970).

1 Defendant used an autodialer, and left voice messages using pre-recorded voices.  
 2 FAC ¶¶10-12. Plaintiff plead that “multiple times” Plaintiff demanded that  
 3 Defendant stop calling her, and Plaintiff’s attorney also contacted Defendant to  
 4 inform them to stop contacting Plaintiff. FAC ¶15. Plaintiff plead that even after  
 5 this, Defendant continued to placed automated/prerecorded calls to her cellular  
 6 phone. FAC ¶ 15. Thus, Plaintiff has plead the dates, participants, and context of  
 7 Defendant’s unsolicited calls to her *and her revocation* sufficiently, contrary to  
 8 Defendant’s position in its Motion to Dismiss. Further, while Defendant attempts  
 9 to improperly introduce evidence as to the medical agreement that Plaintiff  
 10 signed, this “evidence” should not be considered by the honorable Court in  
 11 determining whether Plaintiff has met her burden.  
 12

13 Applying the proper standard and taking all the facts plead as true, Plaintiff  
 14 has adequately stated her TCPA claim based on the quality and context of the  
 15 calls and Defendant’s Motion to Dismiss as it pertains to the FDCPA should be  
 16 denied.

17 *1. Defendant’s “Evidence” Is Improper and*  
 18 *Inadmissible For A Motion to Dismiss*

19 Defendant also hinges its argument on an exhibit which is not attached,  
 20 which is purportedly a “form” that it claims Plaintiff filled out. (See Motion [Dkt  
 21 No. 14] at p.2). But as discussed above, the Court may not consider this  
 22 “evidence” when making a determination on a FRCP 12(b)(6) motion. The Court  
 23 only looks to the Pleadings to make a determination on whether Plaintiff has  
 24 adequately stated a claim upon which relief may be granted. *Cook, Perkiss and*  
 25 *Liehe, Inc. v. Northern California Collection Service Inc.*, 911 F.2d 242, 245 (9<sup>th</sup>  
 26 Cir. 1990) (noting that it is well established that the sufficiency of pleadings must  
 27 be viewed in isolation); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir.1994) (“In  
 28 general a court may not consider items outside the pleadings upon deciding a

1 motion to dismiss, but may consider items of which it can take judicial notice”).  
 2 The exhibit Defendant references (but does not attach, or authenticate) in it’s  
 3 Motion to Dismiss does not meet the narrow exceptions because it is not a  
 4 document submitted as part of the Complaint, nor is it a public record that the  
 5 Court may take judicial notice of. *Lee v. City of Los Angeles*, 250 F.3d 668, 688  
 6 (9<sup>th</sup> Cir. 2001). Further, to the extent that it could be considered, ***Defendant has***  
 7 ***not filed a declaration supporting the authenticity or nature of the document,***  
 8 ***but has merely copied and pasted a portion into the body of the Opposition. This***  
 9 ***portion of a document out of any sort of context, cannot be considered.***

10 Defendant attempts to argue that the Court should rely on this portion of an  
 11 unauthenticated document because it is a document referred to in Plaintiff’s  
 12 complaint. Yet, Defendant does not point to where Plaintiff referenced this  
 13 document in her Complaint. In fact, ***Plaintiff made no reference to this form***  
 14 ***anywhere in her Complaint.***

15 In *U.S. v. Ritchie*, the 9<sup>th</sup> Circuit held that Plaintiff’s mention of a petition  
 16 to the DEA only once in her complaint did not make it “integral to [her] claim.”  
 17 *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). This is directly analogous to  
 18 this matter, as Plaintiff made no mention of the form whatsoever, and the form is  
 19 only tangentially relevant to Plaintiff’s allegations that Plaintiff obtained medical  
 20 services from Defendant. Further, Plaintiff has no means of verifying the  
 21 authenticity of this document. Plaintiff does not have custody of any records of  
 22 the form that Defendant references. Thus, the Court should not consider  
 23 Defendant’s references to this form.  
 24

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2. *Even If Considered, Defendant's Reference To This Document Plaintiff Purportedly Signed Is Irrelevant, And Does Not Bar Plaintiff's Claims*

Defendant's main argument is that Plaintiff's signature on this document precludes Plaintiff filing of a TCPA claim because she consented to being contacted by an autodialer. However, Defendant concedes that if Plaintiff subsequently revoked this consent, she may still have a TCPA claim. (See Defendant's Motion [Dkt No. 13] at 5:20-21 "To the extent Plaintiff revoked her consent, she may still have a claim..."). Plaintiff has alleged that on multiple occasions she requested that Defendant not contact her by an autodialer. FAC, ¶15. Thus, even assuming that she did initially give consent by her signature on that form, *consent was revoked on the first occasion that Plaintiff requested that Defendant stop calling her cell phone by means of an autodialer*. Plaintiff has also specifically alleged that thereafter Defendant continued to contact her. *Id.* Accordingly, Plaintiff still maintains a claim for TCPA violations even if Defendant's arguments hold water (which Plaintiff submits, they do not).

The FCC's July 10, 2015 Declaratory Ruling<sup>2</sup> addressed the scope of revocation. In paragraph 64, the Commission states that, "Consumers have a right to revoke consent, using any reasonable method including orally or in writing. Consumers generally may revoke, for example, by way of a consumer-initiated call, directly in response to a call initiated or made by a caller, or at an in-store bill payment location, among other possibilities. We find that in these situations, callers typically will not find it overly burdensome to implement mechanisms to record and effectuate a consumer's request to revoke his or her consent." *Id.*

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<sup>2</sup> *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, Declaratory Ruling and Order, FCC 15-72, Released July 10, 2015, MCP No. 134 (July 24, 2015) (hereinafter "2015 FCC Order" or "Omnibus Order")*



1 Accordingly, Plaintiff allegations that she requested Defendant to stop  
 2 calling her are sufficient to allege that revocation has occurred. As such, Plaintiff  
 3 submits that Plaintiff's First Amended Complaint has met the 12(b)(6) standards.

4 *ii. Plaintiff Alleges A Clear Set Of Facts To Support Her Claims.*

5 Defendant alleges that the facts Plaintiff has are "vague," but this once  
 6 again ignores Plaintiff's clear and concise pleadings. Defendant attempts to  
 7 selectively read Plaintiff's pleadings to support Defendant's assertion that  
 8 Plaintiff's claims were vague. Plaintiff has alleged that because she requested that  
 9 Defendant not call her, "Defendant did not possess Plaintiff's prior express  
 10 consent to receive calls using an automatic telephone dialing system." FAC, ¶ 15.

11 Plaintiff pled that not only did she demand that Defendant stop calling her,  
 12 but her attorney also demanded that Defendant stop contacting her. FAC ¶ 15.  
 13 Plaintiff pled that thereafter Defendant would continue to call Plaintiff despite her  
 14 demand. FAC ¶ 15. Plaintiff at no point alleges that Defendant ever had consent  
 15 to call Plaintiff, and to the extent Defendant believed it had her consent, she had  
 16 informed them that they did not. FAC ¶ 15. As such, there is no inconsistency  
 17 between Plaintiff not providing her consent prior to the calls and demanding that  
 18 Defendant stop calling her.

19 *iii. Plaintiff's Class Allegations Should Not Be Stricken.*

20 Finally, Defendant includes a final and distinct point that it alleges that  
 21 Plaintiff's claims are not typical for other ATDS revocation class members.  
 22 While Plaintiff believes and alleges she did not provide prior express consent to  
 23 Defendant, Defendant is asserting that Defendant had prior express consent to call  
 24 her. Thus, Plaintiff is entitled to argue in the alternative that to the extent  
 25 Defendant did have consent to call Plaintiff, Plaintiff revoked consent to be called  
 26 by Defendant and yet Defendant continued to call her.

27  
 28 ///

1        Regardless, Plaintiff's claims would thus be typical of the pled Class.  
 2        Whether Plaintiff revoked consent or Defendant never had consent to begin with,  
 3        ***Plaintiff's claims are typical to those individuals who were called without prior***  
 4        ***express consent.*** Once Plaintiff revoked consent, each and every call made by  
 5        Defendant to Plaintiff's cellular phone by means of an autodialer after that time  
 6        violates the TCPA and is made without prior express consent (as consent has been  
 7        revoked). Thus, Plaintiff's claims are typical to those class members "who  
 8        received any collection telephone calls from Defendant to said person's cellular  
 9        telephone made through the use of any automatic telephone dialing system or an  
 10       artificial or prerecorded voice and ***such person had not previously consented to***  
 11       ***receiving such calls...***" (FAC, ¶17, emphasis added). Defendant is seeking to  
 12       aggrandize it's claims, when in fact, Plaintiff's class allegations are typical to the  
 13       facts as alleged in her Complaint. However, to the extent this Court agrees with  
 14       Defendant's arguments, Plaintiff seeks leave to amend to clarify her class  
 15       allegations. To be sure, to the extent that this is an issue, it is not fatal to the class  
 16       allegations and could be amended by a simple clarification of the language stated  
 17       therein. As such, Plaintiff has stated a plausible TCPA claim and Defendant's  
 18       Motion to Dismiss should be denied.

20        **b. The Proper Course Of Action, Should The Court Grant**  
 21        **Defendant's 12(b)(6) Claim, Is A Grant Of Leave To Amend.**

22        Federal Rule of Civil Procedure 15(a) provides that a trial court shall grant  
 23       leave to amend freely "when justice so requires." The Supreme Court has stated  
 24       that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct.  
 25       227, 9 L.Ed.2d 222 (1962). Review of denial of leave to amend is strictly reviewed  
 26       in light of the strong policy permitting amendment. *Texaco, Inc. v. Ponsoldt*, 939  
 27       F.2d 794, 798 (9th Cir. 1991). As such, even if the Court should grant  
 28       Defendant's Motion, in part, it should grant Plaintiff leave to amend. As Plaintiff

1 has asserted throughout this Memorandum, Plaintiff has plead sufficient facts to  
2 overcome a 12(b)(6) Motion to Dismiss, but should the Court rule that it has not,  
3 Plaintiff seeks leave to amend freely with additional facts to meet that low burden.  
4 Plaintiff's amendments would not be "futile" as she could add additional facts and  
5 documents to support her claims at the pleading stage, if the Court rules it to be  
6 required.

7 **V. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests the Court deny  
9 Defendant's motion in its entirety. Should the Court grant Defendant's Motion, in  
10 whole or in part, Plaintiff respectfully requests leave to amend the complaint.  
11

12 Dated: March 24, 2016

Respectfully submitted,

13 LAW OFFICES OF TODD M. FRIEDMAN, PC

14  
15 By: /s Todd M. Friedman  
16 TODD M. FRIEDMAN, ESQ.  
17 Attorney for Plaintiff  
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1 Filed electronically on this 24<sup>th</sup> day of March, 2016, with:

2  
3 United States District Court CM/ECF system

4 Notification sent electronically via the Court's ECF system to:

5  
6 Honorable George H. Wu  
7 United States District Court  
8 Central District of California

9 *And all attorneys of record for Defendant.*

10  
11 This 24th day of March, 2016

12 s/Todd M. Friedman, Esq.  
13 Todd M. Friedman